

ARKANSAS SUPREME COURT

No. CR 05-1295

NOT DESIGNATED FOR PUBLICATION

HUBERT D. CORBIN
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered April 20, 2006

PRO SE MOTIONS FOR LEAVE TO FILE
SUBSTITUTED BRIEF AND FOR THIRTY
DAYS TO FILE SUBSTITUTED BRIEF
[APPEAL FROM THE CIRCUIT COURT OF
JEFFERSON COUNTY, CR 2001-52-1, HON.
BERLIN C. JONES, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT

PER CURIAM

A jury found appellant Hubert D. Corbin guilty of rape and sentenced him to 120 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Corbin v. State*, CACR 03-804 (Ark. App. April 21, 2004). The mandate issued from that decision on May 11, 2004. Appellant filed a petition for postconviction relief under Ark. R. Crim. P. 37.1 on July 16, 2004. Following a hearing, the trial court entered an order denying postconviction relief on June 17, 2005. Appellant lodged an appeal of that order in this court, and before us now is appellant's motion for thirty days to file a substituted brief. We dismiss the appeal because appellant's petition was not timely filed.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*). Here, it is clear on the face of the record that appellant cannot prevail.

Under Ark. R. Crim. P. 37.2(c), a petition for postconviction relief sought under Rule 37.1 must be filed within sixty days after the mandate is issued. In this case, the appellant filed his

petition sixty-six days after the mandate was issued. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on a petition for postconviction relief which is not properly filed. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (*per curiam*). Because appellant's petition was not timely filed, the trial court did not have discretion to provide the appellant additional time, and could not grant the relief requested, as it did not have jurisdiction to consider the petition.

Appeal dismissed; motions moot.